

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re)	
)	
ENTERCOM KANSAS CITY)	
LICENSE, LLC)	
)	
Request for Waiver of Section 73.3555,)	
Note 10)	
Licensee of AM Broadcast Station)	
KKHK(AM), Kansas City, Kansas)	Facility ID No. 73938
and Expanded Band AM Broadcast Station)	
KXTR(AM), Kansas City, Kansas)	Facility ID No. 87143

MEMORANDUM OPINION AND ORDER

Adopted: November 14, 2002

Released: November 20, 2002

By the Commission:

1. Entercom Kansas City License, LLC (“Entercom”), licensee of KKKHK(AM), Kansas City, Kansas, and expanded band station KXTR(AM), Kansas City, Kansas, requests “clarification and modification of the applicability of Notes 9 and 10 of . . . 47 C.F.R. Section 73.3555,” as they apply to Entercom’s dual ownership of KKKHK and KXTR.¹ In the alternative, Entercom seeks temporary waiver of the local radio ownership rules.² As discussed below, we agree with Entercom that application of these Notes to Entercom’s AM stations in Kansas City does not serve the public interest, and accordingly we grant a limited waiver of 47 C.F.R. § 73.3555(a)(1) to permit Entercom to retain ownership of KXTR for the five-year license period during which Entercom is authorized to operate KKKHK(AM) and KXTR(AM).

2. **Background.** Pursuant to the *Report and Order in Review of the Technical Assignment Criteria for the AM Broadcast Service (“Expanded Band R&O”)*,³ Entercom, licensee of existing band station KKKHK,⁴ applied for a construction permit for an AM broadcast station in the “expanded band”

¹ This matter has been referred to the Commission *en banc* by the Chief, Media Bureau, pursuant to 47 C.F.R. § 0.283(c).

² 47 C.F.R. § 73.3555(a)(1).

³ 6 FCC Rcd 6273 (1991), *recon. granted in part and denied in part*, 8 FCC Rcd 3250 (1993), *review denied sub nom*, *N.A.A.C.P. v. F.C.C.*, 40 F.3d 474 (D.C. Cir. 1994) (subsequent history omitted).

⁴ The station’s call sign was KWSJ at the time Entercom sent its letter; the change to KKKHK was granted May 22, 2002.

between 1605-1705 kHz.⁵ The Mass Media Bureau (“Bureau”)⁶ granted the application, and issued the permit May 27, 1998. KXTR’s license was granted October 19, 2001.⁷ Under the terms of the *Expanded Band R&O*, Entercom is allowed to operate both its existing band AM station (KKHK) and expanded band station (KXTR) for a defined “transition period” of five years. The five-year transition period for dual operation begins to run as of the date of license.⁸

3. Note 9 to Section 73.3555 exempts expanded band AM stations from the ownership limits of Section 73.3555(a)(1), but Note 10 limits this rule exemption to a five-year period beginning on “the date of issuance of a construction permit for an AM radio station in the 1605-1705 kHz band.” Entercom currently owns seven other stations in the Kansas City market apart from KXTR and KKHK. Thus, unless Entercom divests itself of one of its Kansas City stations, its compliance with Section 73.3555(a)(1) would expire May 27, 2003, giving Entercom less than two years of licensed dual operating authority.⁹

4. **Discussion.** The transition period for simultaneous operation of existing band and expanded band AM stations was established due to uncertainty as to the availability of expanded band receivers, audience listening patterns, and potential advertising revenues for expanded band stations.¹⁰ Because of this uncertainty, we determined that “temporary dual ownership and operational flexibility [of existing and expanded band stations] are essential to a successful transition to the expanded band,” further stating that the initial time period for such a transition period should be five years.¹¹ Moreover, we stated in the *Expanded Band R&O* that, if warranted, we would entertain an extension of the five-year transition period.¹²

5. To effectuate the transition period and permit dual ownership and operation of existing and expanded band stations, we exempted expanded-band stations from the local and national ownership caps then applicable to radio licensees.¹³ While our multiple ownership rules have undergone significant

⁵ File No. BP-19970616AJ.

⁶ The Mass Media Bureau became the Media Bureau effective March 25, 2002.

⁷ File No. BL-20010425ABI.

⁸ *Letter to Jennifer D. Wagner, Esq.*, 16 FCC Rcd 21398 (Audio Services Div., M.M. Bur. 2001) (“*Wagner Letter*”).

⁹ Under our multiple ownership rules, in a radio market with 45 or more radio stations, a party may own, operate, or control no more than eight commercial radio stations, not more than five of which are in the same service. 47 C.F.R. § 73.3555(a)(1)(i).

¹⁰ *Review of the Technical Assignment Criteria for the AM Broadcast Service, Notice of Proposed Rule Making*, 5 FCC Rcd 4381, 4392 (1990) (“*Expanded Band NPRM*”).

¹¹ *Expanded Band R&O*, 6 FCC Rcd at 6320.

¹² *Id.*

¹³ Limits on multiple ownership of stations have been codified in Section 73.3555 at all relevant times. Note 9 to that section currently provides that the radio contour overlap rule (by which we determine markets for multiple ownership purposes) will not apply to an application for an expanded band station whose 5 mV/m groundwave contour overlaps that of the licensee’s existing AM station. Note 10 states: “Authority for joint ownership granted (continued....)”

changes since the *Expanded Band R&O*,¹⁴ the Notes have remained in effect, as has the incongruity created by the Notes between the period a licensee is generally permitted to operate both an existing band and an expanded band station, and the period in which such dual operation would be exempt from ownership restrictions.¹⁵ Entercom is caught in this incongruity.

6. We are persuaded that rigid adherence to Note 10 in the circumstances of this case would disserve the public interest, and conclude that a waiver of the ownership rules is warranted. The transition period was designed to afford expanded band migrators the opportunity to evaluate the new band's viability while retaining their existing band authorization. At worst, should the expanded band prove not to afford a licensee comparable coverage, listenership, and/or advertising opportunities, it could relinquish its expanded band license and continue operating pursuant to its existing band license. We determined that five years of expanded band operations would be sufficient for stations to make this election.¹⁶ In the instant circumstances, the difference in the way that the operating period and ownership exemption are calculated would significantly erode Entercom's ability to evaluate its expanded band operation. Thus, strict application of the rule may impede our goal of encouraging the relocation of AM stations with high interference characteristics, such as KKKH(AM), to the expanded band.

7. Certain equitable considerations also support this approach. All expanded band permittees – including Entercom – received their construction permits before the expanded band proceeding was final.¹⁷ The Commission's tolling rules do not require construction of a broadcast station in these circumstances, because an appeal could result in an order altering or requiring cancellation of the non-final permit. Measuring the five-year ownership rule exemption from grant of a construction permit would unfairly require certain permittees to bear the risk of an adverse appeals decision, or forfeit some

(...continued from previous page)

pursuant to Note 9 will expire at 3 a.m. local time on the fifth anniversary for the date of issuance of a construction permit for an AM radio station in the 1605-1705 kHz band.”

¹⁴ At the time of the *Expanded Band R&O* in 1991, a party was allowed to own no more than one commercial AM and one commercial FM station per market, with a national cap of 14 AM and 14 FM commercial stations. In 1992 the local caps were raised to three commercial stations in markets with 14 or fewer commercial radio stations, with no more than two in the same service, and up to two AM and two FM commercial stations in a market with over 15 commercial radio stations. The national caps were raised as well, to no more than 18 AM and 18 FM stations (with the cap rising to 20 in each service two years after the rule's effective date). *Revision of Radio Rules & Policies, Memorandum Opinion and Order and Further Notice of Proposed Rule Making*, 7 FCC Rcd 6387 (1992), *recon. granted in part and denied in part*, 9 FCC Rcd 7183 (1994). Finally, the Telecommunications Act of 1996 eliminated the national ownership cap, and allowed a party to own as many as eight radio stations in a market, depending on the market size. *Implementation of Sections 202(a) and 202(b)(1) of the Telecommunications Act of 1996 (Broadcast Radio Ownership)*, 11 FCC Rcd 12368 (1996).

¹⁵ In the *Wagner Letter* we concluded that use of the date of construction permit grant to commence a five-year period “pertains only to numerical ownership limits,” and is “only relevant within the context of the multiple ownership rules.” 16 FCC Rcd at 21399.

¹⁶ See note 10.

¹⁷ The effective date of the final expanded band allotment plan was December 5, 2000, 60 days after publication in the Federal Register. The order became final (i.e., no longer subject to appeal) November 6, 2000, 30 days after publication in the Federal Register. See 47 U.S.C. § 402(c); 47 C.F.R. § 1.4.

portion of their dual operating authority.¹⁸ We conclude that a limited waiver of Section 73.3555(a)(1) is warranted, to permit the joint ownership of Entercom's expanded band station for the full duration of its dual operating authority.

8. Accordingly, IT IS ORDERED that Section 73.3555(a)(1) IS WAIVED to permit joint ownership of Station KXTR(AM) and KKHK(AM) for the duration of Entercom's authorization to operate both such stations.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁸ *Accord Rainbow Broadcasting Co.*, 12 FCC Rcd 4028, 4061 (1997), quoting *Channel 16 of Rhode Island v. F.C.C.*, 440 F.2d 266, 275-76 (D.C. Cir. 1970) (“[I]t is unfair and unreasonable to require construction while relevant FCC policy remains in limbo.”) (cited in *Wagner Letter*, 16 FCC Rcd at 21400).